

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Stephen Bain,	:	
Petitioner,	:	
	:	
v.	:	File No. 2:06-CV-59
	:	
Robert Hofmann,	:	
Respondent.	:	

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed October 19, 2007. Petitioner's objections were filed on November 5, 2007 and November 26, 2007.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's Report and Recommendation and the objections, this Court ADOPTS the Magistrate Judge's recommendations in full.

The respondent's motion for summary judgment (Paper 30) is **GRANTED** and Bain's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Paper 4) is **DISMISSED** without prejudice for lack of exhaustion. In addition, Petitioner's motion for

default judgment (Paper 33) is **DENIED** and the motion to correct (Paper 36) is **DENIED** as moot.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is DENIED because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

THIS CASE IS CLOSED.

Dated at Burlington, in the District of Vermont, this 29th day of November, 2007.

/s/ William K. Sessions III  
William K. Sessions III  
Chief Judge  
U.S. District Court